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No. 92-172

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1992

THE STATE OF COLORADO,
Petitioner,
vs.
NORRIS JONES,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COLORADO SUPREME COURT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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The Respondent, in his Brief in Opposition, asserts that the question presented by the petition is not properly before this court for the reason that the arrest warrant in question failed to meet the definition of an "arrest warrant" in the state statutes and would not have given the police *valid* authority to arrest him. (The actual existence of the warrant was not in question, and it was introduced at the suppression hearing as People's Exhibits 3 and 4.) While the Respondent challenged the way in which the municipal warrant was issued and the state directly contested the ruling of the district court on this point in its interlocutory appeal, the Colorado Supreme Court found it unnecessary to even notice the issue. Instead, without questioning the validity of the warrant, it held as a matter of federal constitutional law that the existence of the warrant, "of which the defendant had not been informed," did not constitute an intervening factor sufficient to remove the taint

from the derivative evidence. *See* Petition for Writ of Certiorari, Appendix A at A-9. The Colorado Supreme Court's opinion is based on the existence of a valid arrest warrant, and it is that construction of federal law with which the People of Colorado are saddled.

Also contrary to the assertion of the Respondent, the question whether the discovery of the arrest warrant was sufficient to remove the taint from the derivative evidence was the specific question presented to and ruled on by the Colorado Supreme Court. In fact, the state's decision not to actively contest the district court's finding of an initial illegality made it the *sole* question for review. The precise limits of terms like "attenuation" and "independent source" and their relation to each other has never been entirely clear, and at times this court has even referred to the latter as being a subset of the former. *See, e.g., Segura v. United States,* 468 U.S. 796, 804-05 (1984). Any differences in emphasis in the way the issue has been presented to this court derive directly from the way in which the Colorado Supreme Court resolved the question below.

The Respondent asserts that there is a serious question whether his statements were even voluntary, and that this court should therefore not address the Fourth Amendment issue presented by the Petition. Although the Respondent raised this issue at the suppression hearing and a major portion of the evidence presented at the hearing is addressed to it rather than the issue presented by the Petition, neither the district court nor the Colorado Supreme Court made any ruling about the voluntariness of the defendant's statements on Fifth/Fourteenth Amendment grounds. To the extent that the term "voluntary" appears at all in either ruling, it is clearly in the context of evaluating the taint from a Fourth Amendment violation.

With regard to the Respondent's claim that the state's choice not to file a reply brief in the state supreme court "raises questions of whether the prosecution has, in fact, properly exhausted all remedies at the State level," Colo. R. App. P. 4.1(f) permits but does not require the state to file a reply brief in an interlocutory appeal, as is evidenced by the fact that the Colorado Supreme Court did not dismiss but decided and published its resolution of this federal question. The relevant question for purposes of certiorari to the Colorado Supreme Court is whether it has rendered a "final decision" within the meaning of 28 U.S.C. §1257, which it has. *See* Petition at 2 n.1.

Lastly, although it is without significance for the issue presented for review, the Respondent liberally criticizes the Petition's recitation of the facts of the case, apparently preferring portions of the testimony or the district court's ruling to the Colorado Supreme Court's published opinion relied on in the Petition.[1]

The Respondent has not suggested any reason why the issue presented by the Petition is not an important one but only why he considers the issue not properly postured for review in this case. For the foregoing reasons, the issue *is* properly postured in this case, and for all the reasons given

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[1]As but one example, compare the Respondent's footnote 7 disputing that he agreed to talk to the police and go with them to the station, with the supreme court opinion, *see* Petition at A-3 ("[T]he detectives... asked Jones if they could speak with him. Jones agreed to go downtown with the officers at their request"), and even the language of the district court, *see* Petition at B-3 ("DeMott...told the Defendant that he wanted to talk to him, and asked him to come downtown. The Defendant agreed").

in the Petition and the Brief of the Amici, the issue is of pressing importance and merits resolution by this court.

Respectfully submitted,

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